

**THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:	Chapter 7
GIUSEPPE BORRACCI,	Bankruptcy No. 22-06488
Debtor.	Honorable: LaShonda A. Hunt
ZANE ZIELINSKI, Trustee	
Plaintiff,	
v.	Adversary No.
MILDRED C. BORCIES,	
Defendant.	

**COMPLAINT TO AVOID
FRAUDULENT TRANSFER AND OTHER RELIEF**

Zane Zielinski, not individually but as the chapter 7 Trustee (the “*Trustee*” or “*Plaintiff*”) of the bankruptcy estate (the “*Estate*”) of Giuseppe Borracci (the “*Debtor*”), brings this adversary action against Mildred C. Borcies (“*Defendant*”):

JURISDICTION AND VENUE

1. This adversary proceeding arises in the Debtor’s Chapter 7 bankruptcy case, pending before this Court as case number 22-06488 (the “*Case*”).
2. On June 9, 2022 (the “*Petition Date*”), Debtor filed a voluntary petition for relief under Chapter 7 of title 11, United States Code (11 U.S.C. § 101, et seq., the “*Bankruptcy Code*”) commencing the underlying bankruptcy Case.
3. Pursuant to 28 U.S.C. § 1334(b), this Court has subject matter jurisdiction over this proceeding, which is referred here pursuant to 28 U.S.C. §157(a) and Local Rule 40.3.1(a) of the United States District Court for the Northern District of Illinois.

4. This is a core proceeding under 28 U.S.C. §157(b)((2)(B), (E) and (H), and this Court has constitutional authority to enter final judgments and orders thereon. In the event that it is determined that any portion of this proceeding is not a core proceeding or that a bankruptcy judge does not have constitutional authority to enter final judgments in this proceeding, the Trustee consents, pursuant to 28 U.S.C. § 157(c)(2), to a bankruptcy judge hearing and finally determining the proceeding and entering appropriate orders and judgments.

5. This Court is the proper venue for this adversary proceeding pursuant to 28 U.S.C. §1409.

BACKGROUND FACTS & ALLEGATIONS

I. The Parties

6. Plaintiff is the duly appointed chapter 7 Trustee of the Estate.
7. Giuseppe Borracci is the Debtor in the underlying bankruptcy Case.
8. The Defendant is a resident of Illinois, in the Northern District of Illinois.

II. Transfer of Funds by Debtor to Defendant for the Benefit of Defendant

9. Upon information and belief, Debtor was scheduled to receive a payment of \$13,604 (referred to hereafter as the "Funds" or the "Transfer") from the Internal Revenue Service in connection with his tax refund for 2021. Exhibit 1, 2021 Tax Return.¹

10. On information and belief, Debtor made arrangements on his tax returns for the Funds to be transferred to Defendant, in the manner of writing the Defendant's account number on his tax return as the destination account.

11. On information and belief, at the time of the payment from the IRS, the Funds were in fact transferred to Defendant and deposited in Defendant's account 5365 at Busey Bank on or near May 1, 2022.

12. Upon information and belief, the Transfer was made without the Debtor receiving reasonable equivalent value in return for the Transfer, and due to the Debtor making the Transfer the Debtor was unable to pay his creditors.

¹ The return shows a higher refund that is due, however the Trustee has learned that the IRS determined that \$13,604 was the correct refund and issued it in that amount.

COUNT I - AVOIDANCE AS INTENTIONAL FRAUDULENT TRANSFERS
11 U.S.C. § 548(a)(1)(A)

1-12. The Trustee incorporates each of the allegations set forth in the foregoing Background Allegations as though fully set forth herein, except that any allegations inconsistent with the relief requested in this Count are not included.

13. Section 548 of the Bankruptcy Code provides that “[t]he trustee may avoid any transfer ... of an interest of the debtor in property ... that was made ... on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily ... made such transfer ... with actual intent to hinder, delay or defraud any entity to which the debtor was or became, on or after the date that such transfer was made ... indebted.” 11 U.S.C. § 548(a)(1)(A).

14. The Transfer constitutes a transfer of an interest in the Debtor’s property.

15. The Transfer was made within two (2) years of the Petition Date.

16. The Debtor made the Transfer with actual intent to hinder, delay or defraud creditors.

17. Multiple badges of fraud exist regarding the Transfer, including: (1) the Transfer was for the benefit of the Defendant; (2) the Debtor received little or no consideration for the Transfer; and (3) the Debtor was insolvent or became insolvent after making the Transfer.

WHEREFORE, the Trustee respectfully requests entry of a judgment avoiding the Transfer as intentional fraudulent Transfer under 11 U.S.C. § 548(a)(1)(A), awarding the Trustee a monetary judgment in his favor and against Defendant in an amount not less than \$13,604.00, and for such other and further relief as is warranted.

COUNT II - AVOIDANCE AS CONSTRUCTIVE FRAUDULENT TRANSFER 11
U.S.C. § 548(a)(1)(B)

1-18. The Trustee incorporates each of the other allegations of this Complaint as though fully set forth herein, except that any allegations inconsistent with the relief requested in this Count are not included.

18. This Count is plead in the alternative to the extent the relief or the allegations contradict anything else contained in this Complaint.

19. Section 548 of the Bankruptcy Code provides that

[t]he trustee may avoid any transfer...of an interest of the debtor in property...that was made...on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

- (i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and
- (ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

11 U.S.C. § 548(a)(1)(B).

20. The Transfer constitutes a transfer of an interest in the Debtor's property.
21. The Transfer was made within two (2) years of the Petition Date.
22. The Debtor did not receive reasonably equivalent value in exchange for making the Transfer.
23. The Transfer was made while the Debtor was insolvent.
24. By making the Transfer, the Debtor was left with insufficient funds to pay other creditors.

WHEREFORE, the Trustee respectfully requests entry of a judgment avoiding the Transfer as a constructively fraudulent transfer pursuant to 11 U.S.C. § 548(a)(1)(B), awarding the Trustee a monetary judgment against Defendant in an amount not less than \$13,604.00, and for such other and further relief as is warranted.

Dated: January 25, 2023

Respectfully submitted,

ZANE ZIELINSKI, not individually but as the chapter 7 Trustee of the bankruptcy estate of Giuseppe Borracci,

By: /s/ Daniel J. Nickel
One of his attorneys

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Form
1040Department of the Treasury—Internal Revenue Service
U.S. Individual Income Tax Return

(99)

2021

OMB No. 1545-0074

IRS Use Only—Do not write or staple in this space.

Filing Status Single Married filing jointly Married filing separately (MFS) Head of household (HOH) Qualifying widow(er) (QW)
 Check only If you checked the MFS box, enter the name of your spouse. If you checked the HOH or QW box, enter the child's name if the qualifying one box. person is a child but not your dependent ►

Your first name and middle initial GIUSEPPE	Last name BORRACCI	Your social security number [REDACTED]
If joint return, spouse's first name and middle initial DEANNA K	Last name BORRACCI	[REDACTED]
Home address (number and street). If you have a P.O. box, see instructions. 26749 S OVERLAND DR		Apt. no. [REDACTED]
City, town, or post office. If you have a foreign address, also complete spaces below. CHANNAHON		State IL ZIP code 60410
Foreign country name [REDACTED]	Foreign province/state/county [REDACTED]	Foreign postal code [REDACTED]
Presidential Election Campaign Check here if you, or your spouse if filing jointly, want \$3 to go to this fund. Checking a box below will not change your tax or refund. <input type="checkbox"/> You <input type="checkbox"/> Spouse		

At any time during 2021, did you receive, sell, exchange, or otherwise dispose of any financial interest in any virtual currency? Yes No

Standard Someone can claim: You as a dependent Your spouse as a dependent

Deduction Spouse itemizes on a separate return or you were a dual-status alien

Age/Blindness You: Were born before January 2, 1957 Are blind Spouse: Was born before January 2, 1957 Is blind

Dependents (see instructions): If more than four dependents, see instruction and check here ► <input type="checkbox"/>		(2) Social security number [REDACTED]	(3) Relationship to you [REDACTED]	(4) <input checked="" type="checkbox"/> if qualifies for (see instructions): Child tax credit [REDACTED]	Credit for other dependents [REDACTED]
(1) First name [REDACTED]	Last name [REDACTED]	[REDACTED]	[REDACTED]	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		[REDACTED]	[REDACTED]	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		[REDACTED]	[REDACTED]	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		[REDACTED]	[REDACTED]	<input type="checkbox"/>	<input type="checkbox"/>

1 Wages, salaries, tips, etc. Attach Form(s) W-2	1
2a Tax-exempt interest	2a
3a Qualified dividends	3a
4a IRA distributions	4a
5a Pensions and annuities	5a
6a Social security benefits	6a
b Taxable interest	b
b Ordinary dividends	b
b Taxable amount	b
b Taxable amount	b
b Taxable amount	b
7 Capital gain or (loss). Attach Schedule D if required. If not required, check here ► <input type="checkbox"/>	7 0.
8 Other income from Schedule 1, line 10	8 25,713.
9 Add lines 1, 2b, 3b, 4b, 5b, 6b, 7, and 8. This is your total income	9 25,713.
10 Adjustments to income from Schedule 1, line 26	10 0.
11 Subtract line 10 from line 9. This is your adjusted gross income	11 25,713.
12a Standard deduction or itemized deductions (from Schedule A)	12a 25,100.
b Charitable contributions if you take the standard deduction (see instructions)	12b 0.
c Add lines 12a and 12b	12c 25,100.
13 Qualified business income deduction from Form 8995 or Form 8995-A	13
14 Add lines 12c and 13	14 25,100.
15 Taxable income. Subtract line 14 from line 11. If zero or less, enter -0-	15 613.

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 11320B

Form 1040 (2021)

Form 1040 (2021) GIUSEPPE BORRACCI & DEANNI R BORRACCI

16	Tax (see instructions). Check if any from Form(s): 1 <input type="checkbox"/> 8814 2 <input type="checkbox"/> 4972 3 <input type="checkbox"/> _____	16	61.		
17	Amount from Schedule 2, line 3	17	0.		
18	Add lines 16 and 17	18	61.		
19	Nonrefundable child tax credit or credit for other dependents from Schedule 8812	19			
20	Amount from Schedule 3, line 8	20	0.		
21	Add lines 19 and 20	21	0.		
22	Subtract line 21 from line 18. If zero or less, enter -0-	22	61.		
23	Other taxes, including self-employment tax, from Schedule 2, line 21	23			
24	Add lines 22 and 23. This is your total tax	24	61.		
25	Federal income tax withheld from:				
a	Form(s) W-2	25a			
b	Form(s) 1099	25b	2,116.		
c	Other forms (see instructions)	25c	375.		
d	Add lines 25a through 25c	25d	2,491.		
26	2021 estimated tax payments and amount applied from 2020 return	26			
27a	Earned income credit (EIC) Check here if you were born after January 1, 1998, and before January 2, 2004, and you satisfy all the other requirements for taxpayers who are at least age 18, to claim the EIC. See instructions ► <input type="checkbox"/>	27a	6,674.		
b	Nontaxable combat pay election	27b			
c	Prior year (2019) earned income	27c	24,242.		
28	Refundable child tax credit or additional child tax credit from Schedule 8812	28	6,750.		
29	American opportunity credit from Form 8863, line 8	29			
30	Recovery rebate credit. See instructions	30	3,500.		
31	Amount from Schedule 3, line 15	31			
32	Add lines 27a and 28 through 31. These are your total other payments and refundable credits ►	32	16,924.		
33	Add lines 25d, 26, and 32. These are your total payments	33	19,415.		
Refund	If line 33 is more than line 24, subtract line 24 from line 33. This is the amount you overpaid	34	19,354.		
35a	Amount of line 34 you want refunded to you . If Form 8888 is attached, check here ► <input type="checkbox"/>	35a	19,354.		
► b	Routing number	► c Type: <input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings			
► d	Account number	5 3 6 5			
36	Amount of line 34 you want applied to your 2022 estimated tax	36			
Amount You Owe	Amount you owe. Subtract line 33 from line 24. For details on how to pay, see instructions ►	37	0.		
Third Party Designee	Do you want to allow another person to discuss this return with the IRS? See instructions ►	► d Yes. Complete below. <input checked="" type="checkbox"/> No			
	Designee's name ►	Phone no. ►	Personal identification number (PIN) ►		
Sign Here	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.				
Joint return? See instructions. Keep a copy for your records.	Your signature	Date	Your occupation CONSTRUCTION		
	Spouse's signature. If a joint return, both must sign.	Date	Spouse's occupation SALES MANGER		
	Phone no. 815-954-8562	Email address			
Paid Preparer Use Only	Preparer's name	Preparer's signature SELF-PREPARED	Date	PTIN	Check if: <input type="checkbox"/> Self-employed
	Firm's name ►			Phone no.	
	Firm's address ►			Firm's EIN ►	

Go to www.irs.gov/Form1040 for instructions and the latest information.

Form 1040 (2021)